

**CALIFORNIA GAMBLING CONTROL COMMISSION**  
**INITIAL STATEMENT OF REASONS**

**CGCC-GCA-2011-04-R**

**HEARING DATE:**                      **January 24, 2011**

**SUBJECT MATTER OF  
PROPOSED REGULATIONS:**        **Renewal of Gambling License; Late Application Fee;  
and Nonpayment of Annual Fee; Temporary Closure  
of Gambling Establishment**

**SECTIONS AFFECTED:**              **California Code of Regulations, Title 4, Division 18:  
Sections 12008, 12335, 12342, 12345, 12357, and 12359**

**SPECIFIC PURPOSE OF REGULATORY PROPOSAL:**

These proposed regulations would:

1. Implement legislation<sup>1</sup> that allows the California Gambling Control Commission (Commission) to establish regulations that provide for a delinquency fee to be paid if an application for renewal of a gambling license is not submitted in a timely manner.
2. Clarify that Section 12347 of Title 4, CCR, is applicable to licenses deemed surrendered under Business and Professions Code section 19955, instituted by AB 2596.
3. Amend existing regulations to refer to an “annual fee” rather than a “table fee,” clarify that the annual fee is based upon the number of tables at the close of the licensee’s fiscal year, and make other technical, clarifying changes to existing regulation text.

**FACTUAL BASIS/RATIONALE:**

**BACKGROUND**

The Gambling Control Act (Act) provides the California Gambling Control Commission (Commission) with jurisdiction over the operation of gambling establishments in California.<sup>2</sup> The Act assigns the Commission with the responsibility of assuring that gambling licenses are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.<sup>3</sup> The Act directs the Commission to issue licenses only to those persons of good character, honesty and integrity, whose prior activities, criminal record, reputation, habits and associations do not pose a threat to

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<sup>1</sup> AB 2596 (Portantino, Chapter 553, Statutes of 2010)

<sup>2</sup> Business and Professions Code, section 19811

<sup>3</sup> Business and Professions Code, section 19823

the public interest of this state.<sup>4</sup> Each person, whether natural person or business entity, holding ownership interest in a gambling enterprise must be issued a license. Licenses are issued for a two-year period, as provided by Business and Professions Code section 19876. Section 19876 also requires that renewal applications be submitted no later than 120 days prior to the expiration of the current license. As a courtesy, a reminder letter regarding the upcoming deadline for the submission of the renewal application is mailed to the owner-licensee's designated agent 150 days in advance of the license expiration.

**Late Renewal Application Delinquency Fee (Business and Profession Code §19876) – Sections 12008 and 12345**

In order to fulfill responsibilities under the Act, the Commission and the Bureau of Gambling Control (Bureau) have established renewal processes that include detailed application forms and extensive applicant background investigations.<sup>5</sup> If a renewal application is submitted less than 120 days prior to the expiration of the current license, the Commission and Bureau may not have sufficient time to complete reviews of the application, conduct investigations, and schedule the application to be heard before the Commission. In the past, this has occasionally required the Commission to extend the existing license for several months while the appropriate reviews are completed. In such instances, the Commission incurs additional workload, as staff must track missing applications, send follow-up notices, cashier multiple payments, and prepare the item for multiple hearings.

This proposed action will establish a delinquency fee of \$1,000 per application if a gambling license renewal application is deemed delinquent. This fee is specifically authorized by Business and Professions Code section 19876(g), and is intended to provide incentive for licensees to meet their statutory obligations for timely submission of renewal applications. The delinquency fee authorized by section 19876(g) is “not to exceed three times the usual application fee,” which, under current statute and regulation, would be a maximum of \$3,000, in addition to the regular application fee of \$1,000. The amount of the fee has been set at \$1,000 – well below the maximum statutory allowance, but still high enough to provide incentive to submit renewal applications in a timely manner.

Subsection (c) of Section 12347 of Title 4, CCR, requires every application for renewal of gambling licenses for a particular gambling enterprise to be submitted to the Commission in a single package. Once Commission staff has deemed the entire package complete, including all required forms, fees, and deposits for each required application, the package is forwarded to the Bureau in order for the background investigation to be conducted. Because the applications are forwarded together as a package, a single late application can cause significant delays in the processing of the package. Consequently, this proposed action will assess the \$1,000 delinquency fee against every application in the package, regardless of how many individual applications were delinquent.

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<sup>4</sup> Business and Professions Code, section 19857

<sup>5</sup> California Code of Regulations, Title 4, sections 12342, 12343, 12344 and 12345

Specifically, this proposal would do the following:

Section 12008

- Subsection (a), paragraph (1) is added to distinguish between initial application fees and renewal application fees.
- Subsection (a), paragraph (2) establishes a delinquency fee of \$1,000 if a gambling license renewal application is deemed delinquent. As discussed above, the establishment of a delinquency fee is intended to provide incentive to licensees to comply with the mandated renewal application submission date.

A review of licensing data from 2009 and 2010 provided the following information:

- 88 application packages were required; of those 24 packages (27%) had at least one application submitted less than 110 days prior to the expiration of the current license.
- 370 total applications were required; 67, or 18%, were submitted less than 110 days prior to the expiration of the license.

The percentage of licensees that submitted late renewal applications in 2009 and 2010 is not trivial. Adding a delinquency fee for late submission of renewal applications should provide a deterrent to such actions.

Section 12342

- The Commission's State Gambling License Application form CGCC-030 is amended to do the following:
  - Conform to the changes in Section 12345;
  - Amend the required background investigation deposits to correspond with the Bureau's newly adopted regulations;<sup>6</sup> and
  - Make technical, clarifying changes that have no regulatory effect.

Section 12345

- Subsection (a) has been rewritten and reorganized to follow a more logical progression. The new subsection (a) states that the application for a renewal of a state gambling license is due 120 days prior to the expiration of the current license, as required by Business and Professions Code section 19876(b), and defines a timely application as one received by the Commission by the due date or postmarked as of the due date. This subsection also provides that an application will be "deemed delinquent" if filed or postmarked later than 110 days prior to the expiration date of the current license, providing a 10-day grace period before the delinquency fee is incurred. The Commission understands that minor delays may happen in the submission of applications. A delay of no more than 10 days generally does not negatively impact the processing, investigation, and review times of the application.

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<sup>6</sup> "Schedule of Investigating and Process Costs," OAL File No. 2011-0203-02 S, approved March 16, 2011

This subsection also defines a “complete application” as the fully executed CGCC-030 for the owner-licensee and each endorsed licensee, the \$1,000 application fee for each application, and any required background deposit. Until the complete application and required fees and deposits are received for *each required application*, the package will not be considered complete. The 120-day deadline is in place so that the Commission and the Bureau have sufficient time to review the application and place the matter on a Commission agenda. The package of applications is not forwarded to the Bureau for review until all applications associated with the gambling establishment are received. If any of the required applications are late, the entire package is delayed. A delinquency fee, therefore, will be assessed against each application in the package in order to provide a substantial incentive for licensees to submit the complete renewal application package by the statutory deadline.

- Current subsections (b) and (c) have been combined into single subsection (b) and contain editorial changes that do not impose any new requirements, and therefore have no regulatory effects.
- Previous subsection (d) has been incorporated into the current paragraph (3) of subsection (a) with no change to the language of the regulation.
- New subsection (c), previously (e), contains only clarifying and conforming changes and does not impose any additional requirements.
  - Previous paragraph (1) has been moved to subsection (a) for the purposes of clarification. Subsection (c) addresses processing times of the state agencies, and is an inappropriate place to include the applicant’s deadline for submittal of an application.
  - Previous paragraph (2) has become paragraph (1). The definition of “application” previously included in this paragraph has been deleted and moved to subsection (a).
  - Previous paragraph (3) has become paragraph (2). The phrase “renewal of” has been added to clarify that renewal applications are required to be forwarded by the Commission to the Bureau within five days. Initial license applications are addressed in a separate section.
  - Previous paragraph (4) has become paragraph (3) and the phrase “unless that application is filed with the Commission less than 120 days prior to the expiration of the current license” has been moved to current paragraph (4) of subsection (d).
- New subsection (d), previously subsection (f), contains conforming changes and does not impose any additional regulatory requirements.
- New subsection (e), previously subsection (g), deletes the requirement that the Commission and Bureau follow the same processing timeframes required in subsection (e), even if the application was not submitted in a timely manner. The language is confusing and contradicts paragraph (4) of subsection (d). If an

application is delinquent, it may not be possible for the Bureau to submit its report 45 days prior to the expiration of the current license. In addition, changes were made to clarify that the Commission could grant a limited extension of a license to operate a gambling establishment past the expiration date of the license, as provided in subdivision (c) of section 19876 of the Business and Professions Code.

- New subsection (f), previously subsection (g), makes technical, clarifying changes that do not impose any additional regulatory requirements.

**Annual Fee (Business and Professions Code section 19955) – Sections 12335, 12357, and 12359**

The Act provides for two primary types of fees to be paid by gambling enterprises – an application fee to be paid whenever an initial or renewal application is submitted<sup>7</sup> and an annual fee calculated on a sliding scale based upon the licensee’s total number of authorized tables or gross annual revenue.<sup>8</sup>

AB 2596 added section 19955 to the Business and Professions Code to allow the Commission to order the temporary closure of a gambling establishment if the required annual fees are not paid by the required deadline. In addition, if the required annual fees have not been paid in full 90 days after the payment due date, the gambling enterprise’s state gambling license shall be deemed surrendered.

This proposed action clarifies and implements provisions of section 19955 in Section 12357 and makes other technical changes to existing regulation. Specifically this proposal does the following:

**Section 12335**

- The term “table fee” is changed to “annual fee” to more accurately describe the nature of the fee and the manner in which it is calculated. Although existing regulations refer to required “table fees,” under the Act, the fee may be based upon either the number of tables *or* the licensee’s gross annual revenue. Because the fee is due on an annual basis, it is more accurate to refer to it as an “annual fee.” This is merely a grammatical change and has no regulatory effect.

**Section 12357**

- The term “table fee” is changed to “annual fee.”
- New subsection (a), previously an unnumbered introductory paragraph, defines a timely submittal of the required annual fees as being received by the Commission or postmarked as of the due date. This subsection also includes clarifying grammatical changes that have no regulatory effect.

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<sup>7</sup> Currently the application fee is set at \$1,000 for a two-year license pursuant to Section 12008, Title 4, CCR.

<sup>8</sup> Business and Professions Code section 19951(c) and (d)

- New paragraph (1) of subsection (a), previously subsection (a), specifies that the annual fee shall be based upon the number of tables at the close of the gambling enterprise's fiscal year. Because gambling enterprises can, under certain circumstances, change the number of permanent authorized tables in operation in the gambling establishment, there has been some confusion as to at what point in time the number of tables should be counted for the purposes of the annual fee. Specifying that the annual fee is based upon the number of tables at the close of the fiscal year should provide helpful clarification.
- New paragraph (2) of subsection (a), previously subsection (b), includes technical, clarifying changes that have no regulatory effect.
- New subsection (b), previously subsection (c), includes technical, clarifying changes that have no regulatory effect, including the revision date of form CGCC-028.
  - Form CGCC-028 – changes include:
    - Updating the header to conform to a universal template.
    - Conforming changes reflecting amendments made in this regulatory package.
    - Technical, grammatical changes.
- New subsection (c) is added to clarify that if the full amount of the required annual fees have not been received within 90 days of the due date and the gambling enterprise's license has been deemed surrendered, as provided in Business and Professions Code section 19955, the surrendered license shall be subject to the conditions in Section 12347 pertaining to abandoned and surrendered licenses. Section 12347 establishes consequences for the surrender or abandonment of a state gambling license. This proposed action explicitly applies those consequences to licenses deemed surrendered pursuant to section 19955. For the sake of consistency, all gambling licenses that have been deemed surrendered should be subject to the same consequences.

#### Section 12359

- Subsection (d) contains conforming editorial and grammatical changes that have no regulatory effect.

#### **Underlying Data:**

Technical, theoretical, or empirical studies or reports relied upon:

- Historical renewal application data

As part of the background for this proposed action, Commission staff reviewed the applications submitted in 2009 and 2010. During that two-year period, all 88 cardrooms were required to submit applications for the renewal of the associated state gambling licenses. Thirty-two of these application packages (36%) were submitted past the 120-day deadline. Eight of these late packages were submitted within the 10-day grace period that would be provided by this regulation, leaving 24 renewal application packages (27%)

that would not have been considered submitted in a timely manner had this regulation been in effect at the time.

### **REQUIRED DETERMINATIONS:**

#### **Business Impact:**

These regulations will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

This proposed action does not impose any new requirement upon or require any new action by any business. There are no additional reporting or recordkeeping requirements mandated, nor are there any new performance standards imposed, technologies or equipment specified, nor specific actions or procedures prescribed.

*Delinquency Fee:* For licensees who comply with their statutory responsibilities to submit renewal applications by the deadline, there will be no impact. Licensees who do not submit their renewal application within 10 days of the deadline will realize an additional \$1,000 fee per application required in the application package.

Because each endorsed licensee is required to submit an application, the number of applications received per cardroom can vary. Many small cardrooms have only one associated license; the largest number of applications received in a package is 75. Of the 24 application packages not submitted in a timely manner in 2009 and 2010, no package had more than six required applications and the mean number of required applications in each late package was three.

*Temporary Closure of Gambling Establishment / Surrender of Gambling License:* For licensees who comply with their statutory responsibility to submit required annual fees within 90 days of the close of their fiscal year, there will be no impact. For licensees who fail to meet their statutory requirement, this proposed action will not create any impact. The consequence for failing to pay required fees is set in statute,<sup>9</sup> and as such, the Commission has no discretion over the matter.

#### **Specific Technologies or Equipment:**

These regulations do not mandate the use of specific technologies or equipment.

#### **Consideration of Alternatives:**

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

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<sup>9</sup> Business and Professions Code section 19955

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

1. Forego the imposition of a delinquency fee (i.e. maintain status quo).

Reason for Rejection: As noted above, over one-third of licensed gambling enterprises submitted at least one required application after the statutorily-mandated deadline. Late submissions can negatively impact the workload and processing times of the Commission and Bureau staff. A delinquency fee provides incentive to meet the required deadline.

2. Assess a \$1,000 delinquency fee against only those individual applications submitted past the deadline.

Reason for Rejection: The Commission's Licensing Division does not forward the package of a gambling enterprise's renewal applications until every required application is received. If seven applications are required, and six are submitted in a timely manner, the entire package is still delayed waiting for the seventh application. In order to ensure all applications are received in a timely manner, the late application fee will be assessed against every required application in the package.

3. Assess a \$1,000 per package for a late application.

Reason for Rejection: A \$1,000 total delinquency fee, regardless of how many applications were late, may not provide enough incentive for licensees to submit applications by the mandated deadline.